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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,072	08/06/2003	James Lousararian	ANG 00.03 CIP5	9838
32047 7590 06/18/2007 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERICAL STREET MANCHESTER, NH 03101			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 06/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/636,072

Applicant(s)

LOUSARARIAN ET AL.

Examiner

Diane Yabut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17,48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-17,48 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to applicant's amendment received 02 April 2007.

The examiner acknowledges the amendments made to the claims.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 5-17 are rejected under 35 U.S.C. 102(b) as being anticipated **Dalessandro** (U.S. Pat. No. **6,273,897**).

Claims 1 and 5-17: Dalessandro discloses a **staple 51** having proximal and distal ends and a plurality of prongs commonly connected at their proximal ends, the prongs extending distally and having tissue-piercing distal tips, a bioabsorbable pledget (or "buttress") **52** made of a polymer of woven or non-woven fabric material such as polyester and containing physiologically active agents that are released over a predetermined time interval, anti-microbial or anti-septic agents, agents that inhibit intraluminal clotting or promote extraluminal clotting, or agents that comprise a coating or are impregnated in said pledget. Delassandro discloses said pledget **52** being embraced by the prongs and being configured to be frictionally engaged by and between the prongs to capture and retain the pledget on the staple, whereby when the prongs of the staple are

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engaged with tissue 70, 72 about the arteriotomy and are closed about the arteriotomy the pledget will be disposed and retained adjacent the arteriotomy (Figures 4-6, col. 7, lines 21-55, col. 5, lines 24 to col. 7, line 11).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dalessandro** (U.S. Pat. No. **6,273,897**) in view of **Kugel** (U.S. Patent No. **5,634,931**).

Claims 3, 4, and 48: Dalessandro discloses the claimed device except for the pledget comprising a plurality of peripherally extending tabs configured to be received between said plurality of prongs, a plurality of holes, each adapted for receiving one of said plurality of prongs, and a plurality of peripheral notches, each of the prongs being disposed within one of the notches.

Kugel teaches a pledget comprising a plurality of peripherally extending tabs **62** configured to be received between said plurality of prongs, a plurality of holes **59**, each adapted for receiving one of said plurality of prongs, and a plurality of peripheral notches **58**, each of the prongs being disposed within one of the notches in order to frictionally keep the pledget in place (Figures 3 and 5,

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col. 5, lines 25). It would have been obvious to one of ordinary skill in the art at the time of invention to provide a plurality of tabs, holes, and notches to the pledget of Dalessandro, as taught by Kugel, in order to facilitate secure placement of the pledget with the staple and the tissue.

5. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Dalessandro** (U.S. Pat. No. **6,273,897**) in view of **McGarry** (U.S. Patent No. **5,366,479**).

Claim 49: Dalessandro discloses the claimed device except for the prongs being commonly connected at a crown formed at the proximal end of the staple, the crown including distally extending tabs or webs adapted to bear against the pledget.

McGarry teaches prongs **110R**, **110L** being commonly connected at a crown **110C** formed at the proximal end of the staple, the crown including distally extending tabs or webs (adjacent refs. **110BR**, **110BL**) adapted to bear against the pledget (Figure 28).

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 5-17 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER